

# Exhibit E

MULTI-DISTRICT LITIGATION

IN RE: GOLD KING MINE RELEASE IN SAN  
JUAN COUNTY, COLORADO, ON AUGUST 5,  
2015.

NO: 1:18-MD-02824-WJ

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE

October 31, 2019  
12:00 p.m.  
421 Gold, Southwest  
Albuquerque, New Mexico

BEFORE: HONORABLE ALAN C. TORGERSON, SPECIAL MASTER

REPORTED BY: Mary Abernathy Seal, RDR, CRR, NM CCR 69  
Bean & Associates, Inc.  
Professional Court Reporting Service  
201 Third Street, Northwest, Suite 1630  
Albuquerque, New Mexico 87102

(2977N) MAS

<p style="text-align: right;">Page 46</p> <p>1 discovery. We'll provide full discovery. But we'll 2 provide full discovery when we can. And that's been 3 our response to those types of questions. 4 Let me go to the third category, if I 5 could, and here I offer to pass the baton to Andrew 6 and Tanner. Do you want to talk about questions in 7 this third category like abandoned mines? 8 MR. WALSH: Thanks, Peter. We're going to 9 have Lauren address that from our side. 10 MS. JOHNSON: Yes. Initially, our issue 11 with these requests is that, similar to what Peter 12 has already said, these are just incredibly 13 overbroad and essentially seeking any information 14 that's not related to abandoned mines on the 15 Sovereign Plaintiffs' territory. So for example, 16 you know, requests for production number 20 asks for 17 all plans, policy documents, guidelines, and 18 regulations issued by you to address abandoned mine 19 sites in your territory since 2005. 20 Similarly, request for production number 21 27 asks for all documents related to work performed 22 or financed by you addressing environmental 23 contamination at any abandoned mine sites in your 24 territories since 2005. 25 You know, the requests are not in any way</p>	<p style="text-align: right;">Page 48</p> <p>1 The first is that, you know, we could send those 2 discovery requests, too; right? We can ask the 3 Federal Government: Give us each and every document 4 regarding every abandoned mine in the United States. 5 Asking the State of Utah or New Mexico or 6 the Navajo Nation about our abandoned mines has 7 nothing to do with this abandoned mine, the Gold 8 King Mine and the negligence that took place that 9 allowed the blowout to occur. The Federal 10 Government in their first document production 11 request, we would ask them to focus on the core of 12 the case and not on these peripheral requests about, 13 well, tell us about every abandoned mine in Utah. 14 SPECIAL MASTER TORGERSON: All right. 15 MR. HSIAO: One more issue, Your Honor. I 16 left a category out. Mr. Bain says he has issues 17 with who we searched, the agencies that we searched. 18 I think his description of that is mistaken. We 19 searched every agency for responsive documents in 20 the State of Utah. There were some agencies, and I 21 think we're down to two where we've identified 22 documents that just weren't relevant. But we did 23 search them and we did come up with them, and they 24 just had nothing to do with the Gold King Mine 25 blowout.</p>
<p style="text-align: right;">Page 47</p> <p>1 tailored to the actual negligence that we have 2 alleged against the Federal Parties. But beyond 3 that, we also don't believe that these are relevant 4 in any manner to showing the standard of care. The 5 Sovereign Plaintiffs intend to set forth what the 6 standard of care is using expert testimony and also 7 using applicable statutes and regulations that 8 govern the Federal Parties' conduct. And we have 9 identified authorities in the Tenth Circuit saying 10 that the conduct of one or two other parties in the 11 industry is not relevant to establishing what the 12 legal standard of care is. The fact that one other 13 state or sovereign may have been using a different 14 standard of care isn't going to change what the 15 legal standard of care is in this case. You know, 16 it's based on a national survey, and you know, we 17 certainly have not sought this information from the 18 Federal Parties. We have not asked the Federal 19 Parties to produce information relating to every 20 abandoned mine that they have participated in across 21 the country, because we don't believe that's going 22 to be relevant to changing the standard of care. 23 SPECIAL MASTER TORGERSON: All right. 24 MR. HSIAO: Your Honor, if I could add 25 just two more thoughts to what Lauren just said.</p>	<p style="text-align: right;">Page 49</p> <p>1 SPECIAL MASTER TORGERSON: All right. 2 Does anybody on the State of New Mexico want to add 3 anything? 4 MR. GILMOUR: Yes, Your Honor. This is 5 John Gilmour. I would like to clarify the status of 6 the search and production in New Mexico. The case 7 has been brought by the Attorney General on behalf 8 of the New Mexico Environment Department. And as I 9 told Mr. Bain and the United States, we will respond 10 to their RFPs. And in particular, any information 11 from other agencies that we have in our possession, 12 such as the tax information, will be produced, and 13 as Mr. Hsiao pointed out, more than likely it will 14 be the topic of expert discovery. So I want to make 15 clear that we are not withholding anything. 16 Second, Your Honor, I advised that while 17 we do maintain that we cannot compel another state 18 agency to respond to discovery requests to NMED, we 19 did volunteer to go to those agencies that they 20 identified and request that they voluntarily produce 21 the information that the United States is seeking, 22 and we would do that through a memorandum of 23 understanding or similar agreement with those 24 agencies to get the information, to the extent that 25 it's relevant and not subject to objection, but we</p>

Page 50

1 would work to try to get them that information.  
 2 So I think the complaint as posed right  
 3 now to Your Honor about New Mexico is premature, as  
 4 we have been trying to work with them to get the  
 5 information that they have identified. And I would

6 only add, Your Honor, that we also concur with the  
 7 points on the abandoned mine issue as recounted by  
 8 counsel for the Navajo Nation and the State of Utah.

9 SPECIAL MASTER TORGERSON: All right.  
 10 Does anybody else want to add anything to what's  
 11 been said on behalf of the Sovereign Plaintiffs?

12 All right. Hearing nothing, I'll tell you  
 13 my impression, and then you can decide how you want  
 14 to proceed.

15 It sounds to me, Mr. Bain, that these  
 16 requests are indeed overly broad and maybe unduly  
 17 burdensome. I'll remind you that the first section  
 18 under Rule 34(b)(1) that talks about contents of the  
 19 request, it says, "The request must describe with  
 20 reasonable particularity each item or category to be  
 21 inspected." And it sounds to me like when you begin  
 22 something with "any and all," that relates to such  
 23 broad categories as you have talked about that  
 24 you're not complying with that part of the rule.

25 So I'm going to let you all have one more

Page 52

1 Nation?

2 MR. WALSH: We agree, Your Honor. Thank  
 3 you.

4 SPECIAL MASTER TORGERSON: Mr. Bain or  
 5 anybody else on behalf of the Government? Do you  
 6 want to be able to file a motion and response and  
 7 reply and get a formal memorandum opinion and order,  
 8 or are you okay with resolving it on the conference  
 9 call?

10 MR. BAIN: I would like to take the  
 11 opportunity you mentioned to confer one more time.  
 12 But I think that these issues are important enough  
 13 for us, and I would just like to -- I don't want to  
 14 leave you with the wrong impression. These requests  
 15 for production were articulated based on discussions  
 16 with our experts.

17 And just to give you an idea with respect  
 18 to one thing Mr. Hsiao mentioned about the requests  
 19 for tourism and taxes being overly broad, you may  
 20 have heard him mention NAICS codes. Those are codes  
 21 that jurisdictions like the states maintain which  
 22 include economic information. This is what our  
 23 expert tells us. This is not overly burdensome,  
 24 that these codes including this economic information  
 25 are maintained by the state. It's something we

Page 51

1 crack at trying to resolve this in some meaningful  
 2 fashion, and if you can't do that by November  
 3 10th -- let me make sure that's a Friday.

4 MR. HSIAO: The 8th is a Friday.

5 SPECIAL MASTER TORGERSON: I should know  
 6 that. That's my birthday. All right. If you can't  
 7 resolve it by -- let's do it by the 11th, which  
 8 is -- well, that's Veterans Day. All right. Let's  
 9 do it by the 12th. We can do one of two things.

10 You can send the request and responses to me, and we  
 11 can try to resolve it in one of these conference  
 12 calls. Or if somebody feels strongly enough about  
 13 it that you want to make a motion so you have a  
 14 record and you can get a more definitive ruling,  
 15 then you can file your motions by November 15th.

16 So let me ask the Sovereign Plaintiffs,  
 17 how would you prefer to resolve this if you can't  
 18 come to some agreement?

19 MR. HSIAO: Your Honor, Peter Hsiao for  
 20 the State of Utah. Your proposal is fine with us.  
 21 We agree to it.

22 SPECIAL MASTER TORGERSON: State of  
 23 New Mexico?

24 MR. GILMOUR: We also concur, Your Honor.

25 SPECIAL MASTER TORGERSON: And the Navajo

Page 53

1 should be entitled to in order to assess their  
 2 damages.

3 Also, I have to correct a misimpression  
 4 that Mr. Hsiao left, that the documents from these  
 5 offices were not relevant. In fact, they said just  
 6 the opposite in their responses, which they were  
 7 technically relevant but they're not going to  
 8 produce them because they don't believe they should  
 9 have to produce them.

10 SPECIAL MASTER TORGERSON: Okay. That's  
 11 good enough. Here's what we're going to do. You  
 12 meet and confer. If you can't get it resolved by  
 13 November 8th, which is my birthday, then you need to  
 14 file your motion to compel by November 15th, and  
 15 we'll deal with it.

16 MR. BAIN: Okay. Thank you, your Honor.

17 SPECIAL MASTER TORGERSON: All right. Now  
 18 I think we're down to the items that I assume are  
 19 all interrelated, and maybe I'm wrong, but it's  
 20 items 1, 4, and 8 that deal with production of  
 21 documents on behalf of the Federal Defendants and  
 22 issues relating to trying to agree on a custodian  
 23 list, a search list, and who's going to be  
 24 responsible for reviewing the documents that are  
 25 produced.

1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3

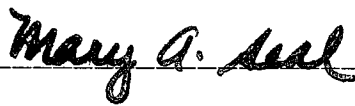
4 REPORTER'S CERTIFICATE

5 I, Mary Abernathy Seal, RDR, CRR, CCR, do  
6 hereby certify that the foregoing pages constitute a  
7 true transcript of proceedings had before the said  
8 Court held in the City of Albuquerque, New Mexico,  
9 in the matter therein stated.

10 In testimony whereof, I have hereunto set my  
11 hand on this 2nd day of November, 2019.

12

13

  
\_\_\_\_\_  
Mary Abernathy Seal, RDR, CRR, CCR  
BEAN & ASSOCIATES, INC.  
NM Certified Court Reporter #69  
License expires: 12/31/19

14

15

16

17

Date taken: October 31, 2019

18

19

20

21

22

23

24

25

SANTA FE OFFICE  
119 East Marcy, Suite 110  
Santa Fe, NM 87501  
(505) 989-4949  
FAX (505) 820-6349

**BEAN**  
**& ASSOCIATES, Inc.**  
**A**  
PROFESSIONAL COURT  
REPORTING SERVICE

MAIN OFFICE  
201 Third NW, Suite 1630  
Albuquerque, NM 87102  
(505) 843-9494  
FAX (505) 843-9492  
1-800-669-9492  
e-mail: info@litsupport.com